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ALINSKY'S PRESCRIPTION: DEMOCRACY ALONGSIDE LAW

BARBARA L. BEZDEK*

INTRODUCTION

Organizing is hot. Not only did it find unprecedented attention during the 2008 presidential election, the New York Times recently carried two stories about organizers and organizing in the same week.¹ In fact, two of the most famous organizers known today are also among the world's most popular figures: Gandhi and Barack Obama.²

This Article examines the import of the life's work of Saul Alinsky—arguably the most prominent founder of contemporary organizing—to the content and methodologies of today's legal education. I review the community organizing theory and practice of Saul Alinsky for its synergies and lessons on two approaches of legal theorists and educators working in law schools today—"community lawyering" and "social justice" practice. These approaches embrace the special responsibility of the legal profession or the quality of justice in society³ by extending the

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1. See Sarah Rimer, *Community Organizing Never Looked so Good*, N.Y. TIMES, Apr. 12, 2009, at ST, available at <http://www.nytimes.com/2009/04/12/fashion/12organizer.html> (reporting on recent college graduates beginning careers as community organizers); John Leland, *With Advocates' Help, Squatters Call Foreclosures Home*, N.Y. TIMES, Apr. 10, 2009, at A1, available at <http://www.nytimes.com/2009/04/10/us/10squatter.html> (describing the work of community organizers to help foreclosure victims).

2. See Peter Dreier, *Organizing in the Obama Years: A Progressive Moment or a New Progressive Era?*, 42 J. MARSHALL L. REV. 685 (2009) (presenting a thoughtful discussion of Americans' rediscovery of community organizing during Barack Obama's 2008 presidential campaign).

3. American Bar Association, Center for Professional Responsibility, <http://www.abanet.org/cpr/mrpc/preamble.html> (last visited Aug. 19, 2009). The Preamble to the ABA Model Code of Professional Conduct provides:

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal systems, and a public citizen having special responsibility for the quality of justice. . . . [13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system.

Additional directives to lawyers that may address lawyers' roles outside

traditional conceptions of lawyers' relationships with clients in ways that are informed by the insights of community organizers, such as Alinsky. Rather than "justice" or the confrontation, so often associated with the Industrial Areas Foundation (the "IAF"), Alinsky's true touchstone was democratic participation. The quality of democracy is everybody's business; and more to the point of this Article, democracy is not the particular concern of the legal academy. On university campuses, the study and theory of democratic participation is more widely the province of departments of sociology, political science, philosophy, and even geography, rather than of professional law schools.⁴

Extended references to Alinsky are few and far between in the scholarly output of law professors (at least as published in law reviews). Why might that be? I begin this inquiry into the relationship between Alinsky's ideas and the contemporary legal academy by imagining the colliding perspectives if Alinsky went to law school.

My inquiry into potential synergies between Alinsky's thought and legal education is a work in progress. For me, law school followed hard-won social and legal changes in response to tumultuous political movements in the 1960s and 1970s. By turns, the Ivy League law school I attended ignored or abused the abutting ghetto. As a clinic student, my first clients were poor Black and Latina battered women and families in public housing. While we pressed individual claims for our clients, we also

of employment in the service of clients and the institutions of justice are addressed to the lawyer "as a public citizen" and admonish that lawyers "should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession" and "should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education." *Id.* Furthermore, "a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority." *Id.* For this reason, each lawyer "should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance" and so, "all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest." *Id.*

4. This is a broad generalization of course, but it considers the customary curriculum, where "democracy" is nominally treated in the study of constitutional procedures of election and recall, legislation, and judicial review. As the subject of scholarship, democracy is featured in discussions of voting rights, corporations' internal procedures, the design of democratic deliberation in cyberspace, international contexts, and in the literature concerning the quality and funding of public education in the U.S.

supported practical efforts to help women escape from their abusers, provided legal workshops, and thought of our advocacy work as educating hearing personnel as well as vindicating rights. But I had never heard of Saul Alinsky or the IAF. Alinsky's teachings began to crystallize for me first as a tenants' advocate in Washington, D.C., and thereafter when I joined the new faculty at The City University of New York ("CUNY") Law School in 1983.⁵ A few years later I moved to the University of Maryland in Baltimore.⁶ I left CUNY for Maryland to develop the law school's "legal theory and practice" curriculum ("LTP"), which seeks to respond to the reality that, no matter how many lawyers graduate each year, the vast majority of the poor lack access to the processes of law and the substance of justice. The courses do more than require pro bono work during the law school years; rather, each LTP course takes a more intensive integration of lawyers' work and study and seeks to make apparent to students the deep connection between legal rules, lawyers' choices, and the realities of the law's impact on the lives of poor people.⁷ And like a number of my colleagues in law school clinical programs around the country, I found my way to a whole-hog "community development practice" after representing individual indigents in an effort to amplify the potential of law as a means of serving underserved communities.⁸

5. CUNY Law School, founded in 1983, defines its mission as "training law students for public service" and advancing social justice. Steve Loffredo, *Poverty Law and Community Activism*, 150 U. PENN. L. REV. 173, 202-03 (2001). CUNY's law students reflect diversities not typical of the legal profession itself. See *Id.* at 203 n.122 (citing a CUNY law bulletin that reported that "over 60% of [CUNY] students are women and more than one-third are people of color. They speak more than twenty foreign languages and are members of over forty ethnic groups."). Many students have themselves experienced poverty and welfare, creating at least the possibility for unique levels of empathy, trust, and understanding with clinic clients. *Id.*

6. Baltimore's IAF achieved the first Living Wage ordinance in the U.S. See Helena Lynch, *Industrial Areas Foundation*, 50 N.Y.L. SCH. L. REV. 571, 576 (2005-06) (detailing the nationwide living wage movement as it began in Baltimore).

7. See generally Barbara L. Bezdek, "Legal Theory and Practice" *Development at the University of Maryland: One Teacher's Experience in Programmatic Context*, 42 WASH. U. J. URB. & CONTEMP. L. 127 (1992); Richard Boldt, et al., *Students and Lawyers, Doctrine and Responsibility: A Pedagogical Colloquy*, 43 HASTINGS L.J. 1107 (1992). The concept of professional responsibility embodied in the LTP charge reflected an arguably vigorous and progressive tradition within the bar. See, e.g., David Luban, *The Noble Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717, 717-18 (1988) (discussing Louis D. Brandeis's vision of the law practitioner as a kind of public servant); William H. Simon, *Babbitt v. Brandeis: The Decline of the Professional Ideal*, 37 STAN. L. REV. 565, 565-71 (1985) (discussing a progressive-functionalist vision of law).

8. See Susan Bennett, *On Long Haul Lawyering*, 25 FORDHAM URB. L.J.

Meeting Saul Alinsky, an Academic and Experiential Learner

The familiar picture of Saul Alinsky—hard-nosed populist not enamored with anything academia had to offer. He famously remarked that academia is irrelevant.⁹ He never was a law student, but he did attend graduate school. Yes, he was a student of the rough and tumble world of late 1930's Chicago, gripped by the Great Depression and controlled by machine politics and Al Capone's Mafia empire.¹⁰ But through much of that decade, he was a graduate student at the University of Chicago.¹¹ In 1938, Alinsky took his graduate degree in criminology and went to work for a sociologist, who dispatched him to research the causes of juvenile delinquency in Chicago's tough "Back of the Yards" neighborhood,¹² in the shadows of Chicago's giant Union Stockyards and the setting of Upton Sinclair's *The Jungle*.¹³ Proponents of experiential education will be interested to know that Alinsky approached this study of gang behavior from the inside. It was there that he came to view criminal behavior as a symptom of unremitting poverty and powerlessness. The Back of the Yards neighborhood was an immense slum.¹⁴ During Alinsky's experiential education, he observed that the neighborhood's inhabitants were poor and had no job security; in the course of one year, stockyard wages were cut three times.¹⁵ He also discovered that he could not stand by as an observer.¹⁶

Alinsky believed that the antidote to the widespread poverty in the United States in the late 1930s and 1940s was active and widespread participation in the political process by "the people of America."¹⁷ He meant "the sweaty and the suave," "the grubby and the grand," and particularly the vast segment of our people who were "confined by color to the dingiest of tenements" and by oppressive labor arrangements to less than their due as Americans.¹⁸ Americans are due "real equality of opportunity for

771 (1998) (describing this journey).

9. SAUL D. ALINSKY, *REVEILLE FOR RADICALS*, at ix (Vintage 1969) (reissuing for the campus activists of the 1960s his philosophical and tactical playbook first published in the 1940s).

10. SANFORD D. HORWITT, *LET THEM CALL ME REBEL: SAUL ALINSKY, HIS LIFE AND LEGACY*, *passim* (Vintage Books 1992) (1989).

11. *Id.* at 14-15.

12. *Id.* at 47-55.

13. *Id.* at 55-57.

14. *See id.* at 57 (describing Chicago's Back of the Yards neighborhood).

15. Independent Television Services, <http://www.itvs.org/democraticpromise/alinsky.html> (last visited Aug. 12, 2009).

16. *Id.*

17. SAUL D. ALINSKY, *REVEILLE FOR RADICALS* 12-14 (University of Chicago Press 1945).

18. *Id.*

all peoples regardless of race, color or creed.”¹⁹ Alinsky approvingly cited Thomas Jefferson’s observation that in every society there are two kinds of [men]: those who “fear and distrust the people, and wish to draw all power from them into the hands of the higher classes” and “those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest and safe, if not the most wise depositories of the public interests.”²⁰

America’s “radicals” are those individuals who follow in the footsteps of Thomas Jefferson and Tom Paine, concerned with the freedom of peoples’ minds as well as with the economic welfare of their bodies through high standards of food, housing, and health.²¹ The radical believes that universal, free, and equal public education is fundamental to democracy²² and that work provides economic security to the individual while making a contribution as a “vital part of that community of interests, values and purposes that makes life and people meaningful.”²³

Methodologically, Alinsky envisioned an “organization of organizations,” comprised of all sectors of the community—youth committees, small businesses, labor unions, and the Catholic Church.²⁴ Of particular relevance to my remarks in this symposium is Alinsky’s view of the neighborhood organization. In *Reveille for Radicals*, Alinsky took pains to distinguish his vision for a “People’s Organization” from “community organizing.”²⁵ When discussing “community organizations,” Alinsky meant community councils, which he argued were hampered by being too narrowly place-based and attending to issues too small to redress the larger injustices of the impoverished masses.²⁶ He tended to dismiss community organizations with the aphorism that “an organization founded on a limited program covering a limited community will live a limited life.”²⁷ Today, such organizations comprise a significant portion of the docket of many law school

19. *Id.* at 24.

20. *Id.* at 16-17 (citing a letter from Thomas Jefferson to Henry Lee, August 10, 1824). Pressing this point, Alinsky further observes that “[L]iberals like people with their heads; radicals like people with both their head and their heart,” and “[L]iberals protest; radicals rebel.” *Id.* at 27, 30.

21. *Id.* at 21-23.

22. *Id.*

23. *Id.* at 25.

24. *Id.* at 77-87.

25. *Id.*

26. *Id.* at 60-61, 64-65.

27. *Id.* at 184. In Alinsky’s view so narrow a focus reflects static and isolationist thinking that fails to recognize the functional extent to which the problems of a local community are malignant microcosms of the larger social order. “The conventional community council . . . cannot and does not want to get down to the roots of the problems” and so “retreats into a sphere of trivial, superficial ameliorations.” *Id.* at 59-60.

community development clinics. Thus, it is instructive to consider the import of this discrepancy with Alinsky's understanding of the relevant sites for significant change.

For decades, community-based organizations have been involved in what we would recognize as grassroots organizing: gathering together for collective action, social engagement, and political expression at the most local levels. Historically, organizing has proved its utility as a political practice: a tool to politicize and mobilize people who lack access to established forms of political and economic power.²⁸ The objective of organizing is to gain the power to meet the needs shared by the people of impoverished and oppressed neighborhoods as well as to demand and instigate change collectively.²⁹ In Alinsky's view, people should form organizations for the "sole reason . . . to wage war against all evils which cause suffering and unhappiness."³⁰

Today's followers of Alinsky's IAF tradition define power in the organizing context "as the ability to act [and] mobilize large numbers of people in strategic activity designed to counter the imbalances in political power."³¹ The "Iron Rule"—never do for people what they can do for themselves—is IAF's defining icon. And in some ways, this is the toughest nut to crack when training law students to be lawyers who can work with organizing communities. The Iron Rule expresses the rejection of relationships in which professionals or outsiders dominate and a commitment to create active, self-governing citizens and citizens groups capable of working to pursue collective ends and communal purposes.

Modern organizing efforts take one of two forms: (1) enabling communities to solve their problems themselves³² or (2) mobilizing people to demand change, whether in the IAF tradition or various

28. See generally *id.*

29. See Susan Bennett, *Little Engines that Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WISC. L. REV. 469, 469 (stating that "the invocation of community control, of and by poor people, can be naïve but genuine"); Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 U. PA. L. REV. 1, 4-5 (2001) (discussing the character of neighborhood-based organizations as bound by shared experiences).

30. ALINSKY, *supra* note 17, at 132.

31. See, e.g., RINKU SEN, *STIR IT UP! LESSONS IN COMMUNITY ORGANIZING*, 24-25 (2003) (defining organizing as an effort to build organizations that include at least these five elements). They are as follows: (1) a clear mission and goals; (2) a membership and leadership structure, with a way for people to join and take roles; (3) outreach systems that concentrate on those most affected; (4) issue campaigns featuring multiple tactics, including direct action; and (5) pursuit of changing institutions rather than individuals.

32. See generally MIHAÏLO TEMALI, *THE COMMUNITY ECONOMIC DEVELOPMENT HANDBOOK: STRATEGIES AND TOOLS TO REVITALIZE YOUR NEIGHBORHOOD* (Amherst H. Wilder Foundation 2002).

other schools of organizing.³³ Both can be viewed as profoundly democratic because both seek the inclusion of the people most affected by a problem. But the latter more earnestly seeks inclusion and representation in governance as well as problem solving. Mobilizing people to demand change most fully embraces the notion of community organizing as a politically regenerative movement. It coalesces around the concept that revitalizing democracy and solving public problems require the creation of pragmatic relationships between local communities on the one hand and the political actors and institutions that affect the communities' interests on the other. Building these essential relationships requires connecting individuals to each other and to a larger organizing effort in order to derive solutions to the public problems that affect them.

A few years ago, Bill Quigley challenged lawyers and educators with the observation that traditional legal advocacy practices fail to serve peoples' empowerment aspirations. He argued that community organizing is *the* essential element of empowering organizational advocacy. Unless the lawyer recognizes that advocacy with groups cannot proceed without community organizing, there can be no effective empowering advocacy. In fact, if an organization could have only one advocate and had to choose between the most accomplished traditional lawyer and a good community organizer, it had better, for its own survival, choose the organizer.³⁴

In this Symposium, we have the opportunity to update our consideration of these important questions: Can lawyers work with communities of the poor and powerless without adding to their oppressions? Can people enhance their own power and organization if they are represented by lawyers? Can lawyers be organizers? Can lawyers work with organizers? How can lawyers work effectively with organized and organizing communities?

33. In addition to the 10-day trainings that IAF provides its organizers and leaders, the Chicago-based Midwest Academy offers Grassroots Organizing Weekends ("GROW") where student activists learn the skills of community organizing; ACORN operates a Leadership School; the People's Institute for Community Organizing ("PICO") offers trainings primarily through religious congregations. SEN, *supra* note 31, at xlvi-xlix. Some graduate schools now offer tracks of study, including a master degree in community organizing. *Id.* at xlix. The Gamaliel Foundation, originally formed by African Americans in Chicago facing discrimination in the attempt to buy housing, reorganized in the 1980s as a training institute to aid low-income people to form powerful organizations. <http://www.gamaliel.org/Foundation/history.htm>.

34. William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 456 (1995).

What Law School Does to Organizers: Reproducing Hierarchy

Saul Alinsky might never have offered his “Rules for Radicals” if he had gone to law school, given the inherent social conservatism of law, legal education, and the elites who, for most of U.S. history, have had preferential access to these institutions. Law schooling exaggerates the importance of external rules, claims and defenses, and analytic reasoning. It treats these as the subject of thought processes that can and should be conducted independently from other intellectual processes. Consequently, this compartmentalizes and demeans the relevance of social context, moral reasoning, and concerns for justice and equality in both the work of “the lawyer’s lawyer” and academic lawyers.

But On the other hand, if Alinsky had spent three years in a law school setting, perhaps he would have ushered in an earlier era of profoundly critical attention to the role of law in perpetuating the social status quo, which affected law practice through the 1960s and burst forth in academia at Harvard Law School in the 1980s.³⁵ It seems likely he would have agreed with Duncan Kennedy’s renowned argument that “young initiates in the law are beaten into submission . . . by a system meant to indoctrinate its enrollees with the proper attitude toward contemporary corporate capitalism.”³⁶ This assertion—originally received by the academy as “radical” and purposefully politically Left—heralded the now familiar argument that traditional legal education perpetuates illegitimate social hierarchies and oppressions. The hierarchies embedded in the minds of those striving to become lawyers “contributes to the reproduction of illegitimate hierarchy on the bar and society.”³⁷

Kennedy urged law students to resist this reproduction of illegitimate hierarchy and the “ideological training for willing service in the hierarchies of the corporate welfare state.”³⁸ The pamphlet was initially distributed like an underground manifesto by a rogue movement of social change agents, ready to bring down the academy from the inside. Ironically, in the intervening years, the Critical Legal Studies movement (“CLS”) transformed into a “mildly irritating but ultimately nonthreatening strain of legal

35. Cf. Robert Coles, *Hierarchy and Transcendence*, 97 HARV. L. REV. 1487, 1491 (1984) (arguing that law school indoctrinates students to accept the status quo of societal hierarchy under the law).

36. *Id.*

37. Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 54, 54 (David Kairys ed., 3d ed. 1998) [hereinafter *Legal Education as Training for Hierarchy*]. The original 1983 pamphlet has recently been republished. DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM (A CRITICAL EDITION) (New York 2004).

38. *Legal Education as Training for Hierarchy*, *supra* note 37, at 54.

thought,”³⁹ and the once-radical tract is now being republished by an academic press.⁴⁰ Both CLS and Kennedy have become enshrined in the mainstream academy. In presenting Kennedy’s 1983 work to a new generation of law students and legal scholars, the reissue illustrates the way in which CLS has been neutralized. The first edition in 1982 opened with David Kairys’s scathing criticism of law as a tool for maintaining the social status quo.⁴¹ The introduction to the third edition states, “This book, in all three editions, is an attempt to develop a progressive, critical analysis of current trends, decisions, and legal reasoning and of the operation and social role of the law in contemporary American society.”⁴²

Lawyers for Poor People Striving to Breathe Free

The seeds of change never died in the streets. Action outside the halls of academia continues to attract and influence the thinking of scholars and educators. Throughout the antipoverty activism of the 1960s, law reform efforts drew upon the potential synergies between activists building grassroots organizations demanding change and lawyers pursuing legal reform.⁴³ Some

39. Melissa E. Murray, “*Td Like to Thank the Academy*”: *Eminem, Duncan Kennedy, and The Limits of Critique*, 55 J. LEGAL EDUC. 65, 65-66 (2005).

40. See *supra* note 38 (noting that Duncan Kennedy’s original 1983 pamphlet was recently reprinted on its own).

41. DAVID KAIRYS, *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 3-6 (David Kairys ed., 1982).

42. DAVID KAIRYS, *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 16 (David Kairys ed., 3d ed. 1998). See Roberto M. Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 561, 561 n.1 (1983) (summarizing the movement’s mission of undermining “the central ideas of modern legal thought,” objectivism and formalism, and characterizing law as “the expression of a particular vision of society”). Kimberlé Crenshaw illustrates additional dimensions of the ways that legal education perpetuates existing hierarchies of power. See Kimberlé Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT’L BLACK L.J. 1, 3 (1989) (describing the “perspectivelessness” required of minority law students, who “must participate in the discussion as though they were not African-American or Latino, but colorless legal analysts. . . .”); Nancy S. Erickson, *Sex Bias in Law School Courses: Some Common Issues*, 38 J. LEGAL EDUC. 101 (1988).

43. There are several histories of this period giving due attention to lawyers and organizers. See generally MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973* 81-95 (1993) (describing the litigation campaign to establish due process rights for welfare recipients facing termination of benefits by government); Jonathan Zasloff, *Children, Families and Bureaucrats: A Prehistory of Welfare Reform*, 14 J. L. & POL. 225, 268-69 (1998) (describing the establishment of local community action boards by the Office of Economic Opportunity to require the “maximum feasible participation” of low-income people, and the creation at the same time of legal services agencies, which brought class action litigation on behalf of affected communities’ interests in fair administration and eligibility standards); JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* 155-62 (1978) (discussing case studies of social

number of lawyers, community organizers, and scholars saw such rights-based reform efforts as an important channel for promoting broader movements for social change.⁴⁴ Yet criticism was leveled by legal scholars and organizers over the disconnect between lawyers' court-based strategies and the priorities of the movements they aimed to advance,⁴⁵ arguing that legal campaigns to secure fundamental social change are doomed to fail without a politically engaged social movement.⁴⁶ As one commentator observed, "[t]he proper job for a poor people's lawyer is helping poor people to organize themselves to change things so that either no one is poor or (less radically) so that poverty does not entail misery."⁴⁷

The criticism that there is a disconnect between lawyers' strategies and the priorities of the movements for whom they advocate has spawned considerable reflection by law professors engaged in progressive practice and education. Professors must now focus on teaching practices that better train lawyers to support community-based activism without undermining community energies by deflecting them into legal campaigns that make lawyers central. This effort is explained in various ways as facilitating client empowerment,⁴⁸ advancing economic justice, and

welfare campaigns that combined litigation with mobilization).

44. See, e.g., Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 MICH. L. REV. 1401, 1405 (1995); Edward V. Sparer, *Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement*, 36 STAN. L. REV. 509 (1984).

45. See, e.g., William H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431, 1432 (1986) (arguing that the reformers' emphasis on legal rights impeded broader social change efforts). Lucie White observes that named plaintiffs in change-oriented litigation often had little contact or relationship with their lawyers. Lucie White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 536 (1987-88).

46. Symposium, *Political Lawyering: Conversations on Progressive Social Change*, 31 HARV. C.R.-C.L. L. REV. 285, 285-86 (1996) (discussing concepts of political lawyering); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 68 (2000) (arguing the importance of poverty lawyers becoming more active in helping client groups to organize and develop long-term political power); Lucie White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, *passim* (1994) (discussing how lawyers can augment their professional training in order to participate collaboratively in work at the grassroots level to bring about social change); Steve Bachmann, *Lawyers, Law and Social Change*, 13 NYU REV. L. & SOC. CHANGE 1, 4 (1984-1985) ("Organized masses of people, not lawyers, play the critical roles" in movements for social change).

47. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L. J. 1049, 1053 (1970).

48. Scott L. Cummings & Ingrid V. Eagley, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 460 (2001).

resisting systemic social subordination.⁴⁹

Gerald López's pioneering criticism of "generic legal education" also matured and spread across the academy throughout the 1980s.⁵⁰ López articulated that subordinated people's need for lawyers who deploy a set of practices is at odds with the narrow "conceptions of practice,"⁵¹ which dominates legal education and the conventional fee-based work that lawyers do. López coined this approach as a "rebellious idea of lawyering," and his call on the academy to provide training that "reflects (and, in turn, helps produce) an idea of lawyering compatible with a collective fight for social change"⁵² has been heard in many law school clinics. Organizing is an essential part of an alternative conception for constructive rebellion, and thus the familiar tools of organizers merit inclusion in a lawyer's expanded skill set.⁵³

To anticipate and respond to the concerns of people who are politically and socially subordinated "demand[s] a range of practical know-how and intellectual sophistication" well beyond competence in litigation.⁵⁴ López and others suggest a range of skills that must be taught to law students planning to work with subordinated people. This range of skills requires that lawyers know how to work with clients and not just on their behalf; it demands knowing how to collaborate with allies rather than ignoring their actual or potential role in the situation; it demands knowing how to take advantage of and how to teach self-help and lay lawyering and not just how to be a good formal representative; it demands knowing how to be a part of, as well as knowing how to build, coalitions, and not just for the purposes of the filing of a lawsuit.⁵⁵

49. Lucie White, *To Learn and Teach: Lessons from Drefrontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 742 (1988).

50. See Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993, 1060 n.243 (outlining a number of works during this period adopting skepticism towards then-typical legal pedagogy).

51. Gerald López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 356 (1989) [hereinafter *Training Future Lawyers*].

52. *Id.* at 305; see also Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1, 2 (1984) [hereinafter *Lay Lawyering*] (describing lawyering as problem solving).

53. See *Training Future Lawyers*, *supra* note 51, at 325 (observing that students often come to realize that the "law simply offers no adequate response to the community problem," and thus "they have to . . . engage in community organizing and empowerment to assist the community in working on its own issues").

54. See *Training Future Lawyers*, *supra* note 51, at 356. See also *Lay Lawyering*, *supra* note 52, at 2.

55. *Lay Lawyering*, *supra* note 52, at 2.

A number of law school clinics and innovative legal advocacy organizations now play a key role in developing a new public interest practice informed by the critical poverty law scholarship of past decades.⁵⁶ A rich vein of social justice teaching persists in the classroom and the experiential courses of the nation's law schools.⁵⁷

REFORM THEORY AND PRAXIS IN THE ACADEMY AND IN THE STREETS

There has been a surprising transformation in the way political activists within legal academia think about achieving institutional change. A prior generation of activists believed they should pursue institutional reform and, sometimes influenced by Saul Alinsky's confrontational model,⁵⁸ embraced organizational change agents in the roles of provocateurs or angry oppositionists. This earlier approach to reform advocacy had as its hallmarks confronting power, stirring things up, demanding recognition, and forcing concessions. Protest was heated, defiant, righteous, and intended to be empowering to those who engaged in it.⁵⁹

Yet today, that ethos has been largely replaced—most

56. Lawyers across a variety of practice settings work collaboratively with clients, communities, and activist groups to pursue collective, multifaceted approaches to fighting subordination and effecting social change. See, e.g., Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535, 546-63 (1987-88) (examining two case studies of "mobilization on the margins of litigation"); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619, 674-82 (1992); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 428-50 (1995); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1905 n.113 (2007) (describing pervasive influence of critical poverty law scholars on public interest practice).

57. Some scholars have defended the importance of offering students "impractical theory," particularly for those students committed to careers in law reform or public service. Derrick Bell & Erin Edmonds, *Students as Teachers, Teachers as Learners*, 91 MICH. L. REV. 2025 (1993). Students, they argue, need exposure to nontraditional legal theories, so that they can "write briefs that effectively challenge the many injustices that now threaten our society in ways so dire, so dangerous, that few in policymaking positions are willing even to contemplate, much less attempt, much-needed reform." *Id.* at 2026.

58. Alinsky frankly defended the use of irreverence and profanity, because of their utility in goring the "sacred cows." ALINSKY, *supra* note 9, at xiv. The argument was taken up by activists and theorists in the succeeding generation also. See, e.g., Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. SOC. CHANGE 369, 391-405 (1983).

59. See SUSAN D. CARLE, *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* 230-37 (2005) (summarizing and providing examples of the earlier literature on oppositionalist lawyering for social change).

strikingly among activists who self-identify as operating in the community organizing tradition—by approaches that emphasize “negotiated relationships,” “power-sharing,” and “new experimentalist approaches to public problem solving.”⁶⁰ Reformers across the political spectrum express zeal for collaboration models.⁶¹ One can scarcely locate an oppositional politics in American law school clinics today.⁶²

Changes in These Times: New Governance

This shift reflects changes in the roles and structures of government, which present new opportunities and imperatives for new forms of law practice. In the 1980s, government agencies began to jettison some of the command-and-control regulatory apparatus that defined state and federal governance. Instead, much ‘new governance’ grants to state and local jurisdictions the flexibility to experiment with incentives for socially desirable behaviors within the ambit of antipoverty programs such as welfare, work rules, and subsidized housing.⁶³ As the modern state requires more local knowledge and flexibility to adjust to the new role of the regulatory state, some theorists see a new dawn for democratic opportunity that organized communities can play. To believers in the organizing movement, community-based organizations are sites for the development of countervailing

60. Julissa Reynoso, *The Impact of Identity Politics and Public Sector Reform on Organizing and the Practice of Democracy*, 37 COLUM. HUM. RTS. L. REV. 149, 164-66 (2005) (describing new forms of collaborative governance between community organizations and government).

61. See Carle, *supra* note 59, at 145-47.

62. See, e.g., Susan R. Jones, *Current Issues in the Changing Roles and Practices of Community and Economic Lawyers*, 2002 WISC. L. REV. 437, 441-43 (2002) (discussing “enhanced strategic collaboratives” between low income neighborhoods and local business communities); Robin S. Golden & Sameera Fazili, *Raising the ROOF: Addressing the Mortgage Foreclosure Crisis Through a Collaboration Between a City Government and a Law School Clinic*, 2 ALB. GOVT. L. REV. 29, 33 (2009) (describing a collaboration between Yale’s legal clinic and the city of New Haven and arguing that such clinic partnerships with local government can introduce students to an expanded range of roles for lawyers “beyond the adversarial and client-centered assumptions than current community and economic (CED) work”); Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLINICAL L. REV. 227, 227-72 (2000) (collecting “innovative practices” and discussing how these can achieve social change).

63. See Orly Lobel, *The Renew Deal: the Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 345-47 (2004) (detailing legal theories that together comprise the ‘new governance’ model); see also Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1126-27 (2000) (describing the evolution of welfare administration and its effects on welfare recipients).

power and incubators of solutions to complex public problems. A number of legal scholars argue that it is a positive development that “[p]rivate actors are deeply involved in regulation, service provision, policy design, and implementation.”⁶⁴ Others describe the privatized new governance norm as “democratic experimentalism,” a new form of government where power is decentralized to enable citizens and other actors to utilize their local knowledge to fit solutions to their individual circumstances.⁶⁵

For poor people and their communities, three procedural consequences of these changes in governmental operations bear on this Symposium’s topic. First, the forum shifts necessarily from courtrooms to administrative and community settings. This reflects the diminution of due process rights governing the receipt of important household benefits. A corollary of this change is, the fact that much advocacy in the post-welfare era takes place in forums that are more accessible to individual claimants and their organizations,⁶⁶ meaning that lawyers need not be pressed into the role of gatekeeper.

Second, the forum flexibility invites innovative roles for lawyers working with communities, in light of this diminished importance of the traditional attorney-client relationship in shaping public benefits advocacy.

Third, the denouement of procedural rights for the poor underscores the utility of coalition work. Building effective coalitions among those hurt by public policy as well as between communities, lawyers, and others, including organizers, is all the more important as due process protections are removed. Coalition building is hard work. For one thing, it tends to require more trust and open communication than may be the norm among community-based organizations or between lawyers and clients. Engaging lawyers to participate in community mobilizations, in ways that do not adhere in some articulable way to the lawyer-

64. See, e.g., Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. L. REV. 543, 551 (2000). Susan Bennett, however, identifies both negative and positive of relying on CBOs for services and for the promotion of local democratic participation. Bennett, *supra* note 29, at 470-73.

65. Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998). Dorf and Sabel also suggest that in this new phase of U.S. democracy, regional and national coordinating bodies will require actors to share their knowledge with others facing similar problems. *Id.* at 404-18. See David A. Super, *Laboratories of Destitution: Democratic Experimentalism and the Failure of Antipoverty Law*, 157 U. PA. L. REV. 541, 553-59 (2008) (critiquing Dorf and Sabel’s theory as it has played out for antipoverty policy in the United States).

66. See David A. Super, *Offering an Invisible Hand: The Rise of the Personal Choice Model for Rationing Public Benefits*, 113 YALE L.J. 815, 889 (2004) (observing that “[l]ittle of the important work in transforming Medicaid and the food stamp program required a bar card”).

client relationship, may deter many pro bono lawyers from investing time and resources in an agenda that appears exceed what is legally or politically feasible.

For their part, community organizations may be unwilling to pursue cooperative agreements with public institutional actors whom prior experiences has taught them to distrust; or they may be unable to collaborate with other community actors without the extended facilitation that Alinsky meant to be provided by professional organizers.⁶⁷ Just as López raised awareness of lawyers' need to broaden their skill sets to work effectively with community based groups—by moving beyond litigation and traditional deterministic legal analysis—community clients and their organizations are likely to need to diversify their advocacy arsenals without allowing their old confrontational tools to rust.

*Changes in Poverty Characteristics from Alinsky's Day to Ours:
Implications for Communities, Lawyers, and Organizers*

The persistent concentrations of urban, mostly minority poverty in the face of an unprecedented twenty-year period of national affluence pose a grave challenge to the democratic principles and values of this nation. The challenge is to foundational values of freedom and opportunity that are deeply held by citizens of any major political party. We have no effective national policy or coherent ideology to combat this economic and social reality. A family that cannot pay its bills is not free. A child denied a good education is denied equal opportunity. A minority child—growing up in an urban area lacking living wage jobs and beset with drug abuse, violent crime, failing schools, and the other socially dysfunctional problems so common in our “ghetto areas”—scarcely has the same opportunity to succeed as a white child in a suburban neighborhood.⁶⁸

In our time, the gap between rich and poor has continued to widen in the United States as well as worldwide.⁶⁹ Poverty in America is again on the agendas of policy makers, and so is concern that poor people are particularly disadvantaged by the provisions and processes of the law⁷⁰ and by the inaccessibility of

67. ALINSKY, *supra* note 9, at 112-52 (discussing the necessary traits of a person doing organizational work).

68. Gregory L. Volz, Keith W. Reeves, & Erica Kaufman, *Higher Education and Community Lawyering: Common Ground, Consensus, and Collaboration For Economic Justice*, 2002 WIS. L. REV. 505, 506-07 (2002).

69. JUDITH GOODE & JEFF MASKOVSKY, *THE NEW POVERTY STUDIES: THE ETHNOGRAPHY OF POWER, POLITICS, AND IMPOVERISHED PEOPLE IN THE UNITED STATES* 4 (Judith Goode & Jeff Maskovsky eds., 2001). Henry Rose, *Retrospective on Justice and the Poor in the United States in the Twentieth Century*, 36 LOY. U. CHI. L.J. 591, 600 (2005).

70. Deborah L. Rhode, *Access to Justice: Again, Still*, 73 FORDHAM L. REV. 1013, 1021 (2004) (“[M]ost legal academics have done little to educate

legal services for people without the means to pay.⁷¹ I submit that concern about poverty's ills for persons and for the quality of democracy has persisted among a number of professors and law school programs. These actors have been striving to instill in law students the imperative to pursue social justice since the time of *Reveille*. This is evident in efforts to reform law's substance,⁷² practice and politics,⁷³ and variously as an aspect of a lawyer's role and professional responsibility.⁷⁴ This is distinct from the more

themselves, the profession, or the public about access to justice and the strategies necessary to increase it. . . . [W]e are not shouting from rooftops about unmet needs; we are not, for the most part, even murmuring in classrooms or muttering in law reviews."); see also John O. Calmore, *Social Justice Advocacy in the Third Dimension: Addressing the Problem of "Preservation-Through-Transformation,"* 16 FLA. J. INT'L L. 615, 632 (2004) (noting that one criticism of legal education is that "law school fails to produce public spirited and socially responsible lawyers . . .").

71. The Legal Services Corporation ("LSC") undertook a study to determine the extent to which low-income Americans were unable to secure access to civil legal assistance. The report, "Documenting the Justice Gap in America—The Current Unmet Civil Legal Needs of Low-Income Americans," concluded that "[a]lthough state and private support for legal assistance to the poor has increased in the last two decades, level (or declining after factoring in inflation) federal funding and an increased poverty population have served to increase the unmet demand." LEGAL SERVICES CORP., OVERVIEW OF DOCUMENTING THE JUSTICE GAP IN AMERICA—THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 2 (2006), <http://www.lsc.gov/press/documents/JusticeGapReportOverview120105.pdf> (quoting report overview with the full report available at http://www.lsc.gov/press/documents/LSCJusticeGap_FINAL_1001.pdf). The research preceded the vastly increased need for legal assistance that resulted from the impact of Hurricane Katrina by a greatly expanded population of people eligible for subsidized legal services.

72. Academic lawyers have contributed voluminous to the ideas and arguments to counter public policies that affect people by dint of their poverty, welfare receipt, social status, health, homelessness, and so on, as a few moments on Lexis or Westlaw search engines will attest. The legal landscape for the poor, as well as for lawyers for the poor, changed dramatically from the 1960s to the 1990s. Peter Edelman, *Responding to the Wake-Up Call: A New Agenda for Poverty Lawyers*, 24 N.Y.U. REV. L. & SOC. CHANGE 547 (1998).

73. See generally GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICAGO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

74. See, e.g., Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 1011 (2004) (arguing that in order to increase the number of law school graduates who embrace a professional responsibility to assure access to justice for the poor, clinicians must strive to inculcate in their students an understanding and compassionate concern for the plight of people living in poverty as well as a sense of professional responsibility for increasing their access to justice).

Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 288 (2001) (asserting that "[a] provocateur for justice actively imbues . . . students with a lifelong learning about justice, prompts them to name injustice, to recognize the role they may play in the perpetuation of injustice and to work

general conversation within the legal profession about access to justice, rather than justice itself,⁷⁵ which expresses the sentiment that access to the legal system, though critical to many when meaningful, does “not capture the full range of legal inequality that affects people and communities.”⁷⁶

In important respects, the communities where today’s poor live are dissimilar from those of past generations. Past generations suffered poverty as a result of deprivation, lost opportunity, and exploitation, but they experienced oppression within the national economic and social system.⁷⁷ Insofar as their experience occurred within this system, they had at least some potential for escaping poverty and climbing into a higher rung of society. Conversely, today’s inner-city poor do not experience inequality within the national economic system; rather, they are entirely removed from it and are treated as simply superfluous to economic and societal organization.

William Julius Wilson has observed that to resolve the structural causes of concentrated poverty will require “radicalism” not yet apparent in the public policy objectives of either dominant political party.⁷⁸ He argues that it will take a multiracial coalition to mobilize the necessary political support and the financial resources to put an intervention strategy into action. A number of activists and scholars see that potential in today’s growth of grassroots support for economic justice initiatives, specifically, in citizen-led initiatives striving to rebuild the business and economic infrastructures in some of our impoverished areas.⁷⁹

toward a legal solution to that injustice.”); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1470-78 (1998) (describing the resurgence of clinical work as a vehicle for instructing law students on the importance of social justice concepts).

75. Deborah L. Rhode discusses the responsibility of legal educators to instill professional values. DEBORAH L. RHODE, ACCESS TO JUSTICE 191-93 (2004). “Legal education plays an important role in socializing the next generation of lawyers, judges, and public policymakers. As gatekeepers to the profession, law schools have a unique opportunity and obligation to make access to justice a more central social priority.” *Id.* at 193. See generally *Symposium, The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 277 (1992) (providing commentary on the social justice mission of law schools).

76. EQUAL JUSTICE PROJECT, ASS’N OF AM. LAW SCH., PURSUING EQUAL JUSTICE: LAW SCHOOLS AND THE PROVISION OF LEGAL SERVICES 3 (2002), available at http://www.aals.org/equaljustice/final_report.pdf.

77. See Ashar, *supra* note 56, at 1943-46 (discussing what Michael Harrington called “new poverty” (citing MICHAEL HARRINGTON, THE NEW AMERICAN POVERTY 9 (1984))).

78. WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY, at ix (1987); WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR, at xiii-xiv (1996).

79. See generally WILLIAM H. SIMON, THE COMMUNITY ECONOMIC

Alinsky asserted that active people's organizations would bring greater 'democracy,' by which he meant political participation in the call upon government and the distribution of social goods. While much of what he said advocated for greater material and social well-being in the forms of work, pay, and creative scope, his writings do not address *how* democracy creates social justice among contending interest groups.

I suspect that among many lawyers and law professors, there is greater hope that a more just ordering can be articulated through law, rather than through politics. Elaborating this disjunction fully is beyond the scope of this Article, but I offer two observations.

Democracy Is the Workhorse

Although I speak here of colleagues who embrace social justice teaching, I assume that others in the legal academy and the legal profession also care deeply about achieving social justice. No one is against social justice until we begin to articulate what it should look like—how governmental powers, individual rights, or tax laws should be revised to achieve it.

Alinsky's answer to this endemic problem lies in his view of the origins of shared knowledge and collective power. He explains that empowered active people's organizations are "brought together"—the "native leadership" of a community's many associational circles could become friends and see their common humanity. People are "organized" when they are brought together, get to know each other's point of view, and discover that many of their individual problems are common to all.⁸⁰ Although he surmised that "all people [interested in a People's Organization] support" general elements of a people's program "such as medical care, full employment, good housing, good schools, equal opportunities," and above all,

[T]he real democratic program is a democratically minded people—a healthy, active, participating, interested, self-confident people who, through their participation and interest, become informed, educated, and above all develop a faith in themselves, their fellow men, and the future.⁸¹

And yet, to lay the burden of social and economic community renewal on poor people getting by in poor neighborhoods, what

DEVELOPMENT MOVEMENT: LAW, BUSINESS AND THE NEW SOCIAL POLICY (2001); CED enables the power of collective activity to support low-income communities. It allows poor citizens to experience how capitalism can work for them, instead of their more common experience of how its residual effects bar them from economic opportunity.

80. ALINSKY, *supra* note 9, at 53-54.

81. *Id.* at 55.

exactly do we presume?

[T]o ask those with the fewest capital, institutional, and human resources to draw on those resources to better their lives; to ask those whose trust has been betrayed over and over . . . to join a process requiring significant trust; and to ask the excluded to be responsible for finding a way to become included.⁸²

Teaching Social Justice and Social Justice Lawyering

As noted at the outset of this paper, the explicit goals and values of the legal profession do not include the pursuit of social justice.⁸³ In 2004, Deborah Rhode published a stinging critique of law schools for their failure to embrace a justice mission and complicity in the pervasive denial of access to justice to the poor.⁸⁴ There is a small groundswell within the legal academy to encourage law students in the challenges of lawyering to promote social justice. In their eponymous casebook, Professors Mahoney, Calmore, and Wildman define social justice to mean the “elimination of . . . institutionalized discrimination,” “[p]romoting individual and collective well-being, enhancing human dignity, and correcting imbalances of power and wealth.”⁸⁵

Pre-eminent clinical scholars Jane Aiken and Steve Wizner argue for teaching “social justice lawyering” in law clinics, beginning with nurturing students’ “capacity for moral outrage at the injustice in the world.”⁸⁶ Increasingly, clinical professors are beginning to articulate frameworks for teaching the essential skills and methods of social justice lawyering, although distinguishing these skills from the objects of social justice lawyering is still an emerging endeavor.⁸⁷ Calmore stresses the

82. Bennett, *supra* note 29, at 470 (quoting ROBERT HALPERN, *REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES* 12 (1995)).

83. By contrast, the code of ethics for the National Association of Social Workers articulates as a “core value”: “Social workers challenge social injustice. Social workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people” and “seek to promote . . . knowledge about oppression; . . . equality of opportunity; and meaningful participation in decision making for all people.” The National Association of Social Workers, <http://socialworkers.org/pubs/code/code.asp>.

84. Rhode, *supra* note 70, at 156-60.

85. MARTHA R. MAHONEY, JOHN O. CALMORE & STEPHANIE M. WILDMAN, *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW* 1 (2003). “Social justice lawyering seeks to give material meaning to these ideals in the daily lives of individuals and communities that are marginalized, subordinated, and underrepresented.” *Id.*

86. Wizner & Aiken, *supra* note 74, at 1009.

87. See, e.g., Martha F. Davis, *The Pendulum Swings Back: Poverty Law in the Old and New Curriculum*, 34 *FORDHAM URB. L.J.* 1391, 1395 (2007); Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability*

importance, and possibility, of teaching our students to hope. “[O]ur social justice students need more from their professors than sophisticated analysis; they need inspiration. While ready and able to deliver the analysis, we are less attuned to the need—or less confident in our ability—to deliver the inspiration.”⁸⁸ “Law teachers in this vein strive to prepare students for the world in which they will practice, including the struggles that poor communities face and the ineptitudes they may carry with them, if they do not become attuned to the professional values and norms that often act to reinforce inequity and the status quo.”⁸⁹

Calmore and others make the observation that “[t]raditional law study, both in terms of course offerings and teaching methodology, may detract from learning the lessons of social justice.”⁹⁰ The “better” a student becomes at the study of law, the more difficult pursuing social justice may become because of the professional embrace of the notion that lawyers are simply amoral agents that operate within these structures, regardless of whether these structures are oppressive.⁹¹

Necessarily, one of the first tasks is to help students understand who their most marginalized clients are, which includes understanding clients in a context beyond what their legal claims might look like. Because poor Americans experience poverty “not simply as individuals, but as members of a poor community,”⁹² the history of peoples’ struggles and the roles and skills of organizing are important elements of training today’s law students to be agents of democracy-serving legal action.

Lawyers who have learned respect for their clients’ communities can practice law in a manner that is responsive to and respectful of the needs and autonomy of marginalized groups. This methodology features “collaborative work with the client community,” “dialogue and mutual education . . . strategic work,”⁹³

to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission, 16 S. CAL. REV. L. & SOC. JUST. 23 (2006).

88. Derek Black, *Turning Stones of Hope into Boulders of Resistance*, 86 N.C. L. REV. 673, 677 (2008).

89. *Id.* at 684; see KENNEDY, *supra* note 37, at 54.

90. John O. Calmore, “*Chasing the Wind*”: *Pursuing Social Justice, Overcoming Legal Mis-education, and Engaging in Professional Re-socialization*, 37 LOY. L.A. L. REV. 1167, 1187 (2004).

91. *Id.*

92. John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927, 1943 (1999). Calmore forewarns law students that social justice lawyering is not a theoretical or legally intuitive exercise, nor glamorous work, but instead is grounded in communities that may be foreign to the students, yet in which they as attorneys must immerse themselves to gain understanding, competency, and the community’s trust. *Id.* at 1932-36. See also Black, *supra* note 88, at 688.

93. Calmore, *supra* note 90, at 688.

and helping communities “learn how to interpret moments of domination as opportunities for resistance.”⁹⁴ Social justice teachers agree with the primary message of organizers that responsive lawyering requires an attorney to relinquish her power, leadership, and hierarchical position over clients.

According to Calmore:

[W]e cannot come into the picture with canned claims and prayers for relief. We must be open to being used by the client community in ways that they deem appropriate. We can provide technical assistance and advocacy perspective; we can enhance their stories; and we can help them leverage their positions. . . . [W]e can join the political project by occupying the real-and-imagined worlds on the margin and helping the community to reclaim these spaces as places of radical openness and possibility.⁹⁵

The organizer’s toolkit is making its way into clinical and classroom courses, refashioning the images of what lawyers “do.” Understanding people in their context, cultural competence, deep listening, relating to others’ humanity, and liking people—all are at last getting their due. Fundamentally, though, the take-away from reading Alinsky is for lawyers—aiding communities in their recovery and rebuilding, seeking to serve social justice and deepen democracy—to aid the poor and oppressed of America to shatter the shell of isolation that keeps them outside of democracy’s mainstream.

TO ‘SHATTER THE SHELL OF ISOLATION’: LAW ALONGSIDE
ORGANIZING AS COMPLEMENTARY DISCIPLINES FOR DEMOCRACY-
BUILDING

Alinsky’s understanding of the possibilities for citizen-led social change hinged on “indigenous leadership.” Alinsky emphasized that poor people should do the work themselves. The objective is not the end in itself, but the quality of “Popular Participation.”⁹⁶

There remain important settings where lawyers are needed to do what organized communities cannot do for themselves—most paradigmatically, to sue. Whereas community organizing and community lawyering strive to build networks that empower

94. *Id.*

95. Calmore, *supra* note 92, at 1950; White, *supra* note 46, at 160-61; Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 426-28 (2001).

96. ALINSKY, *supra* note 9, 174-80. See Julissa Reynoso, *The Impact of Identity Politics and Public Sector Reform on Organizing and the Practice of Democracy*, 37 COL. HUM. RIGHTS L. REV. 149, 158-67 (2005) (discussing of changes underway within the contemporary organizing movement so as to become more reflective and responsive to issues of identity and concern as to race, ethnicity, and gender issues).

people, social change litigation is intended to establish rights or clamp the brakes on norms of subordination. Litigation to halt the demolition of public housing in post-Katrina New Orleans, to redirect the public transit dollars to serve the Los Angeles bus riders, and to equalize the expenditure of public school funding, are all efforts to change the rules of the systems that ensnare the poor and powerless. These examples illustrate that it is entirely possible for litigation strategies to grow out of, and to complement, constructive and empowering social movements,⁹⁷ rather than for “the lawyer and the litigation process itself [to] become agents of client subordination.”⁹⁸

Poverty and subordination may isolate people who share common burdens created or perpetuated by the rules and norms of society’s laws. We need not prioritize one lawyering model over the other, particularly as we come to understand the ability of different models to operate compatibly. Lawyers, communities, and organizers likely have much more to learn about effective empowering collaborations. The diversity of organizing traditions, settings, and tactics is perhaps as much a barrier as it is an Alinsky-esque antipathy to lawyers. Lawyers, clients, and organizers can perhaps more fully articulate and appreciate the distinct dynamics of communities’ justice work when the community elects to engage in community development, community building, or community organizing.

The ongoing collaboration of lawyers with dozens of community-based groups in post-Katrina Biloxi, Mississippi, illustrates a high degree of collaboration by empowered community clients with lawyers who adopted a “community lawyering” approach that aligns most completely with community organizing in the pursuit of political enfranchisement and governmental accountability. In this way, it differs significantly in form and aim from numerous sites of community lawyering within law school clinics that represent nonprofit organizations engaged in community development or community economic development.⁹⁹ The grassroots Steps Coalition, formed following Hurricane Katrina, joined in outrage over the failure of state and local officials in their stewardship of recovery efforts for people on the Coast.¹⁰⁰ The Coalition launched its “People Before Ports

97. See generally PENDA D. HAIR, *LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE* (2001) (recounting a dozen complementary instances of litigation *alongside* popular organizing, including the Los Angeles Bus Riders Union).

98. Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities on Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEG. & PUB. POL’Y. 35, 49 (2004).

99. Jones, *supra* note 62, at 449-53; see generally SIMON, *supra* note 79.

100. Steps Coalition, http://www.stepscoalition.org/about/article/about_steps

Campaign” to challenge Mississippi governor’s misdirection of \$600 million in federal recovery funds to expand the Port of Gulfport.¹⁰¹

Large portions of the housing stock in coastal counties was destroyed or rendered uninhabitable by Katrina.¹⁰² Rents in the apartments that were still livable rose by thirty to fifty percent.¹⁰³

Destruction of affordable housing stock, developer-driven zoning decisions, and the decision of Mississippi’s Attorney General not to regulate price gouging for private rental housing resulted in the permanent loss of affordable housing, historic neighborhoods of color, and small Vietnamese fishing businesses,¹⁰⁴ while casinos and high-end condominiums sprouted with governmental aid.¹⁰⁵

The Mississippi Center for Justice (“MCJ”) became the central gathering point for the thousands of law students who flocked to the Mississippi Gulf Coast to provide Katrina legal assistance.¹⁰⁶ MCJ was founded in Jackson, Mississippi, in 2003 by local civil rights leaders to create a new capacity in the state: a home grown, nonprofit public interest legal and policy organization that advances racial and economic justice through systemic change.¹⁰⁷ From the beginning, MCJ carried out its mission through a “community lawyering” approach and combined traditional legal strategies with policy advocacy, grassroots community organizing and outreach, convening of stakeholders, coalition-building, media advocacy, and public education.¹⁰⁸ In its first two years, MCJ provided legal advice and research to local campaigns to create

_coalition (last visited Aug. 12, 2009).

101. Fact Sheet on Diversion of Housing Funds to Port, http://www.stepscoalition.org/downloads/news/reports/PeopleBeforePorts_ActionKit.pdf (last visited Aug. 12, 2009).

102. John Jopling, *Two Years After the Storm: The State of Katrina Housing Recovery on the Mississippi Gulf Coast*, 77 MISS. L.J. 873, 875 (2008).

103. *Id.* at 876.

104. Chris Kromm & Sue Sturgis, *A Harder Look at Haley Barbour’s Post-Katrina Miracle*, SALON, May 25, 2007, available at <http://www.salon.com/news/feature/2007/05/25/mississippi/index.html>; Tim Shorrock, *Hurricane Recovery, Republican Style*, SALON, Aug. 29, 2007, available at http://www.salon.com/news/feature/2007/08/29/gulf_coast/index.html?source=rss.

105. *Media Ignored Mississippi’s Use of Waivers to Redirect Funds Designated for Low-Income Katrina Victims*, Aug. 30, 2007, <http://mediamatters.org/research/200708300010> (last viewed Aug. 20, 2009).

106. Law students were recruited primarily by the Student Hurricane Network and Karen Lash, former Associate Dean at the University of Southern California Law School and Senior Program Counsel at Equal Justice Works at the time of the storm. Karen A. Lash & Reilly Morse, *Mitigating Disaster: Lessons From Mississippi*, 77 MISS. L.J. 895, 904-05 (2008).

107. Mississippi Center for Justice, <http://www.mscenterforjustice.org/aboutus.php> (last visited Aug. 12, 2009).

108. *Id.*

better futures for low-income Mississippians and communities of color in the areas of health, education, economic justice, and child care.¹⁰⁹

When Hurricane Katrina devastated the Mississippi Gulf Coast in 2005, MCJ opened its Katrina Recovery Office in Biloxi with two objectives: to respond to the overwhelming legal needs of individual survivors and influence recovery-related policy decisions.¹¹⁰ Mississippi's legacy of race and class discrimination was mirrored as a defining feature of the recovery—policy makers directed most of the recovery funds to homeowners, higher-income survivors, and businesses.¹¹¹ From environmental policy to “NIMBYism” and local government decisions about placement of Katrina cottages to the failure to remediate mold in public housing projects, racism was—and continues to be—profoundly present in the recovery.

Community lawyering is likely to be better suited where there is a mobilized community—people who see themselves as sharing a membership in an interest or identity (public housing residents, cash-strapped bus riders)—and may well be aided by sharing a geographic concentration as well as a ready means to share information. Many housing and land use issues are amenable to community lawyering because the residents live together for many years, permitting them to interact with the same government agencies and property developers in a stable legal environment.

Community lawyering may also serve better than lawyer-led strategies in situations where a well-defined community can achieve a ‘repeat player’ position and interact frequently with a particular agency or entity such as a developer, employer or housing authority. In such a situation, the relationships of political processes may tend to be more effective than resorting to the judiciary. Political solutions generated by a mobilized community may well deliver more positive outcomes for people than reformist litigation.¹¹²

There remains a role for social justice lawyers to frame litigation designed to change policies that afflict a class of people. Sadly, many poor people do not occupy communities having the features of shared identity and cohesion. Even if geographically

109. *Id.*

110. *Id.*

111. Jopling, *supra* note 102, at 887.

112. In Maryland, a class action on behalf of all African American public housing tenants in the City of Baltimore resulted in a partial consent decree that led to a structured negotiation between class counsel and the Housing Authority in the siting of new public housing in neighborhoods of greater opportunity. *Thompson v. HUD*, 348 F. Supp. 2d 398, 424-28 (D. Md. 2005). Nevertheless, substantially more units have been demolished than have been replaced. *Id.* at 511-21.

near, community organizing may well be a necessary predicate to community lawyering where individuals share common burdens but have yet to appreciate that commonality. And for many of the ills that trouble low-income people in the United States, legal action may be suitable where organizing has not and, perhaps, cannot occur. For example, following Hurricane Katrina, thousands of people were caught up in struggles with governmental agencies such as the Federal Emergency Management Agency, the Housing Authority of New Orleans, insurance companies, and social services. While the impact on their lives was huge, the people affected had insufficient tools to identify or communicate with each other, name or categorize the policies that compounded the harm they suffered, or address their concerns to decision makers. Although they shared common legal issues, they were far flung geographically, making community organizing problematic. In that setting, class action litigation presented itself as the more strategic choice among lawyering tactics.¹¹³

In any of these situations of insufficient community organization, well-crafted litigation informed by collaborative community relationships between lawyer and client can be successful in the narrow legal sense of producing a form of enforceable relief. Furthermore, success in courts or legislatures on behalf of classes of citizens is an important expression of peoples' claims to justice and equality, with both material and symbolic significance in refashioning the norms of society.

Lawyers will readily agree that just because litigation is an important hammer in the toolkit for justice does not make it the instrument of choice. Throughout the history of public interest law practice in the United States, lawyers have been both lionized and criticized for operating as elites who have used legalism in the name of the disenfranchised, to demand individual rights and formal legal equality.¹¹⁴ But this is no longer the time of our fathers' and mothers' public interest practice. A mounting chorus calls for a plethora of strategies and capacities, as well as interdisciplinary collaborations and coalition building, by which to redress the injustices of today.¹¹⁵

113. See, e.g., *Ridgely v. FEMA*, No. Civ. A. 07-2146, 2007 WL 1728725 (E.D. La. Jun. 13, 2007) (certifying a class of plaintiffs who challenged FEMA's recoupment procedures as arbitrary); *McWaters v FEMA*, 436 F. Supp. 2d 802, 822-28 (E.D. La. 2006) (ordering FEMA to stop requiring Small Business Administration loan applications as prerequisite to other assistance applications and limiting FEMA termination of hotel assistance).

114. Orly Lobel, *The Paradox of "Extra-Legal" Activism: Critical Legal Consciousness and Transformative Politics*, 120 Harv. L. Rev. 937, 949-52 (2007).

115. See Rose Voyvodic & Mary Medcalf, *Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal*

Lawyering and organizing, in tandem, offer several contributions to the collaborative social justice work of people's organizations.

Tactical Pluralism. Throughout the long tradition of "public interest lawyering," lawyers have embraced tactical pluralism and have worked all along a continuum of tactics from traditional adversarial techniques to media and public relations campaigns, popular education, and grassroots organizing.

Norm Setting. Litigation and legislative advocacy that elicits a declaration of legal rights by the courts or legislature of a jurisdiction has a uniquely important role in forging new norms, particularly when this is the outcome of popular collective action.¹¹⁶

Collaborations Across Knowledge Sets. "Community lawyering" entails collaborations with people situated in their community groups. Community cognizance is the source for identifying issues for collective action and for evaluation of the role of legal strategies in addressing the concerned community's priorities. Community lawyering practices, as depicted in law school clinics and beyond, focus on empowering communities, promoting economic and social justice, and fostering systemic change. The collaboration is essential to transcending individualized claims in order to promote and achieve such change.

Representation as Mobilization. Much of the collaboration embraced by community lawyers could be characterized as a version of the client participation valued in conventional conceptions of 'client centered lawyering,' but this does not adequately capture the democracy-building principle or practice of lawyers working with marginalized people's groups described as mobilization lawyering by Lucie White, Sameer Ashar, and others.¹¹⁷ "Mobilization lawyering" reframes the participatory element in two ways that are important for Alinsky's democracy prescription; first, it directs the action of clients and lawyers to correct the deficiencies in majoritarian democracy, through opening up access to the political decision making in which the

Assistance in Windsor, 14 WASH. U. J.L. & POL'Y 101, 103 (2004) (arguing that service to low-income or disadvantaged communities must include a commitment to social justice encompassing, beyond traditional casework, community education, public policymaking, and community development); Louise G. Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 FORDHAM URB. L.J. 801, 807 (1998) (describing importance of collaboration between client groups, lawyers, and other professionals).

116. See, e.g., Judith Resnik, *Law's Migration: American Exceptionalism, Silent Dialogues, and Federalism's Multiple Ports of Entry*, 115 YALE L.J. 1564, 1669-70 (noting the necessity of working at multiple sites—international, transnational, national, local—as a "norm entrepreneur").

117. White, *supra* note 56, at 536-38; Ashar, *supra* note 56, at 1920-21.

client group is underrepresented; and second, by providing support for local grassroots organizing outside of formal political process.¹¹⁸

Frequently, if implicitly, this work requires long-term commitments by the lawyers to the client communities, sustained by relationships with clients that necessarily reckon with the social, economic, and political contexts of the collaborators' lives. Typically, community lawyers share with their clients the commitment to creative, collaborative work for solving the complex problems that constrain and exclude clients from the blessings of liberty and equality that Alinsky believed would flow from people's organizations.¹¹⁹

CO-CITIZEN LAW PRACTICES: LAW ALONGSIDE ORGANIZING

Alinsky's prescription for his country was that we practice democracy seriously. His democratic vision turned on his faith in the potential of ordinary people to partake in democratic practices of inclusion, information sharing, deliberation, collective assessment, strategy, joint action, and mutual accountability. I think he would be surprised to observe the current practices among scholar-practitioners to take this prescription to heart in their work as lawyers.

Perhaps the several strands of rebellious lawyering, cause lawyering, community lawyering, and mobilization lawyering¹²⁰ join to form an "emerging tradition" of "lawyering for democracy,"¹²¹ as co-citizens. This frame shapes the relationships of lawyer and community, and of law and organizing, with regard to the ends and means of the collaborative work and of the agency of the participants in that work. These lawyers emphasize working with clients and the clients' groups, communities, and allies.

Lawyers and clients working as co-citizens are not likely to aim primarily for legal reform, although that may well be necessary to achieve the principal aim. Neither rejecting remedies at law nor achieving change through litigation, yet skeptical as to the reach of litigation isolated from public action and social movements, the object of the collaborative work is ultimately the

118. See generally Scott L. Cummings, *Internationalization of Public Interest Law Practice*, 57 DUKE L.J. 891 (2008).

119. Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on Community Lawyering: The Oldest (Newest) Wave in Clinical Legal Education*, 28 WASH. U. J. L. & POL'Y 359 (2008).

120. Scott Cummings also provides a lucid discussion of the legal scholarship of these approaches to lawyers work in *Mobilization Lawyering: Community Development Lawyering in the Figueroa Corridor*, <http://ssrn.com/abstract=909303>. See also COREY SHDAIMAH, *NEGOTIATING JUSTICE* (2009).

121. This argument was offered recently by Professor Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383 (2009).

transformation of living conditions “for those whom our political economy and society routinely deny dignity and equal justice.”¹²² Instead, these lawyers favor multiple, multilateral efforts by various participants in a variety of arenas. The tactical toolkit encompasses litigation, legislative change, lobbying, community and popular education, media campaigns, political mobilization, and organizing as a range of options to assess and deploy in such combinations as each context warrants.¹²³

Co-citizen lawyers “do not see themselves as saviors, protectors, or instructors of befuddled victims, nor as preeminent engines or engineers of social change.”¹²⁴ To lawyers working within this frame, clients are active partners in working to solve their problems. These lawyers work *alongside* clients—individuals, organized groups, and informal associations—and the allies they enlist, in multidimensional efforts to advocate for justice.

122. *Id.* at 1386.

123. *Id.*

124. *Id.* at 1385.